

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Chief Bankruptcy Judge
Sacramento, California

September 20, 2004 at 9:00 a.m.

1. 04-24502-A-7 ROBERT SACHS
UST #2

HEARING - UNITED STATES TRUSTEE'S
MOTION FOR EXTENSION OF TIME FOR
FILING A MOTION TO DISMISS OR A
COMPLAINT OBJECTING TO
DEBTOR'S DISCHARGE
8-9-04 [34]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the creditors, and all other potential respondents to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The United States Trustee requests an order extending the last date to either file a motion to dismiss pursuant to 11 U.S.C. § 707(b) or object to the debtor's discharge. The United States Trustee filed this motion to extend time before the original time to file an objection to discharge expired as required by Fed.R.Bankr.P. 4004.

The motion is based on the fact that the debtor's property, held in co-tenancy, appears to be undervalued. On August 26, 2003, Michelle R. Long filed a petition for relief under chapter 7. On her schedules, Ms. Long stated a co-tenancy in 5300 Divot Circle, in Fair Oaks, California, with a current market value of \$310,000 and a secured claim of \$295,163. On December 29, 2003, Fairbanks Capital Corporation was granted relief from stay as to the chapter 7 trustee. On February 23, 2004, Ms. Long's case was closed as a no-asset case.

On April 30, 2004, the debtor filed a chapter 7 petition. John R. Roberts was appointed as the chapter 7 trustee. The debtor scheduled a co-tenancy in 5300 Divot Circle, in Fair Oaks, California, with a current market value of \$310,000 and a secured claim of \$296,000. On May 17, 2004, Fairbanks Capital Corporation was granted relief from the automatic stay.

On June 25, 2004, the chapter 7 trustee filed an amendment changing the case to an asset case, and later filed an application to employ a real estate agent on July 27, 2004. An Exclusive Agency Listing Agreement showed the listing price at \$439,000.

Because the subject property appears to be undervalued in both of the above cases, the United States Trustee requests an additional 60 days to ascertain the value the trustee will potentially receive from the subject property.

September 20, 2004 at 9:00 a.m.

The motion will be granted. The last day to file a motion to dismiss or object to the debtor's discharge will be extended to October 8, 2004.

2. 04-28104-A-7 GEORGE CUYLER HEARING - MOTION FOR
DGF #1 AUTHORITY TO REDEEM PERSONAL
PROPERTY APPROVAL OF ASSOCIATED
FINANCING AND ATTORNEYS FEES
8-11-04 [6]

Final Ruling: The motion will be dismissed without prejudice.

The notice of the hearing gives inaccurate and insufficient notice of the deadline for opposition. It states that written opposition is due "prior to the hearing." Because 28 days or more of notice of the hearing was given, Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002) is applicable. This rule requires that written opposition be filed 14 calendar days prior to the hearing. The local rule also requires that the notice of hearing inform respondents when written opposition to the motion must be filed. See Local Bankruptcy Rule 9014-1(d)(2) & (3). The notice of hearing failed to give this information. Thus, notice was deficient.

The court also notes that no admissible evidence supports the motion. For instance, there is no declaration from the debtor demonstrating that the subject property is used primarily for personal, family or household use, that the lien on the subject property is a dischargeable consumer debt, or that the value of the property is as represented. The opinion of value is not authenticated by the appraiser's declaration nor have the appraiser's qualifications been established.

3. 98-33304-A-7 ENRIQUE GAONA AND CONT. HEARING - MOTION TO
SDB #3 MARIA RICO AVOID LIEN
VS. CALIFORNIA STATE AUTOMOBILE ASSOC. 3-31-04 [19]

Tentative Ruling: The debtors filed a chapter 7 petition on August 27, 1998 and received their discharge on January 26, 1999. The case was reopened on March 31, 2004.

On December 10, 1997, a judgment was entered against the debtors in favor of California State Automobile Association in the amount of \$2,824.05. That lien attached to the debtors' real property located at 396 Cottonwood Street, in Vacaville, California.

California Automobile Association has withdrawn its opposition to this motion.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$113,000 as of the date of the petition. The unavoidable liens total \$114,824.05. The debtors have an available exemption of \$15,800. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 522(f)(1)(A).

Accordingly, the motion will be granted.

4. 03-30006-A-7 HARVEY DORREN
DNL #3

HEARING - TRUSTEE'S MOTION TO
APPROVE THE SALE OF REAL
PROPERTY LOCATED AT 5356
WESLEY ROAD, ROCKLIN, CALIFORNIA
9-8-04 [62] O.S.T.

Tentative Ruling: The motion will be granted.

The chapter 7 trustee seeks to sell the real property of the estate for a minimum of \$600,000. The trustee requests the sale be subject to overbids.

11 U.S.C. § 363(f) allows trustees to sell property of the estate free and clear of liens only if: (1) permitted by non-bankruptcy law; (2) the lienholders consent to such sale; (3) the proposed purchase price exceeds the total value of the liens against the property; (4) a good faith dispute concerning the validity of the liens exists; or (5) in a judicial proceeding, the lienholders are compelled to accept a money satisfaction of their interest.

The trustee seeks approval of sale free and clear of liens. However, the sale described is not a lien free sale because all liens, including the debtor's homestead exemption, will be paid in full from escrow. Therefore, it is unnecessary to invoke section 363(f).

Accordingly, the motion is granted subject to overbids at the hearing.

5. 03-33507-A-7 KENNETH/SHARON MELIKIAN
EJS #1

HEARING - MOTION TO
COMPEL ABANDONMENT OF
PROPERTY OF THE ESTATE
9-3-04 [46]

Tentative Ruling: The motion will be denied without prejudice.

The debtors filed a petition for relief under chapter 13 on December 16, 2003. The case was converted to a petition under chapter 7 on May 11, 2004.

The debtors seek an order compelling the chapter 7 trustee to abandon real property of the estate located at 4186 Windsor Point Place, in El Dorado Hills, California, and personal property scheduled in their Schedule B. The debtors argue that the property is of inconsequential value or is burdensome to the estate.

The debtors scheduled the fair market value of the real property at \$575,000, with a secured claim of \$518,411, in their Schedule A. The debtors claimed a homestead exemption of \$75,000 in their Schedule C.

On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b).

The motion is denied without prejudice. The debtors have not presented sufficient evidence to prove the value of the property or the amount of the liens encumbering it. The only evidence accompanying the motion consists of Schedules A and B. Taking judicial notice of these schedules does not cure the absence of this evidence. Such notice only establishes that the schedules were filed but it does not establish the truth of the matters stated in the schedules. In short, this motion should be supported by a declaration from the

debtors, or from someone with personal knowledge of the relevant facts.

- [illegible]

Tentative Ruling: The petition will be dismissed.

The debtors filed a voluntary petition for relief under chapter 13 on June 3, 2004. The debtor did not file the following required documents: Summary of Schedules, Schedules A-J, and Statement of Financial Affairs.

The case was converted to a petition under chapter 7 on August 3, 2004. Prem Dhawan was appointed as the chapter 7 trustee. The debtors filed their Summary of Schedules, Schedules A-J, Statement of Intentions, and other documents. However, the debtors have failed to file their Statement of Financial Affairs.

Pursuant to Fed. R. Bankr. P. 1007(c), schedules and statements were due no later than June 18, 2004. The Statement of Financial Affairs has still not been filed. The petition is therefore dismissed, pursuant to Fed. R. Bankr. P. 1007(b) (1).

- [illegible]

Tentative Ruling: The debtor filed a voluntary petition for relief under chapter 7 on May 18, 2004. John R. Roberts was appointed as the chapter 7 trustee.

The trustee seeks to sell all machinery, fixtures, and equipment, except for the computer system, at the medical center located at 6322 Hwy 193, in Georgetown, California. Per the debtor's schedules and a private party appraisal, the subject property is valued at \$21,620. The trustee has received an offer from Dr. Bakos for the amount of \$8,000 to purchase the subject property. However, the offer is contingent upon the court's approval of the motion to transfer active medical records (docket control no. JRR-4). The purchase would be subject to existing liens and encumbrances, if any.

11 U.S.C. § 363(b) provides that a trustee may sell property after a notice and hearing. No opposition to this motion has been filed. The court will approve the sale as it is in the best interests of the creditors.

- [illegible]

Tentative Ruling: The debtor filed a voluntary petition for relief under chapter 7 on May 18, 2004. John R. Roberts was appointed as the chapter 7 trustee.

The debtor operated a medical center, and the trustee is now in possession of the debtor's medical charts and records. In his motion the trustee states that the law requires that active medical charts be kept for a minimum of seven (7) years after a patient's last treatment and, in the case of a minor, one (1)

year after the patient has reached the age of 18, whichever time is longer. Thus, the estate must find a doctor to assume possession and responsibility of these records.

The trustee now moves to transfer the debtor's medical records to Dr. Bakos. The trustee has received an offer from Dr. Bakos in which he will take possession and assume responsibility of the active records in exchange for compensation in the amount of \$2,000. However, this offer is contingent upon Dr. Bakos' successful purchase of assets pursuant to the trustee's motion to sell assets (docket control no. JRR-3). The trustee asserts that he had investigated utilizing a medial storage facility, but that the cost was prohibitive to the estate.

Pursuant to 11 U.S.C. § 503(b) actual and necessary costs and expenses of preserving the estate are allowed as administrative expenses. Here, the compensation paid to Dr. Bakos to take responsibility of the records is an actual and necessary cost that will benefit the estate. Accordingly, the motion is granted.

9. 04-25124-A-7 GEORGETOWN DIVIDE FHC HEARING - MOTION TO
 JRR #5 CENTER, INC. SEEK A COURT ORDER TO PAY
 MORE WORKSHOP TO DESTROY ALL
 THE INACTIVE MEDICAL CHARTS
 AND PAY SOMEONE TO HAUL THE
 CHARTS FROM GEORGETOWN
 TO PLACERVILLE
 8-11-04 [20]

Tentative Ruling: The debtor filed a voluntary petition for relief under chapter 7 on May 18, 2004. John R. Roberts was appointed as the chapter 7 trustee.

The trustee seeks approval to pay for the transport and disposal of inactive medical records. The debtor operated a medical center, and the trustee is now in possession of the debtor's inactive medical charts and records. According to the trustee, these inactive charts can be destroyed. The trustee has contacted the More Workshop, which has offered to shred the charts for thirty-five cents per pound. The trustee does not know the total weight of the inactive charts at this time. Thus, the total cost of shredding the charts is also unknown.

Furthermore, the inactive medical records must be transported from Georgetown to Placerville. The cost of transporting the documents is also unknown at this time.

Pursuant to 11 U.S.C. § 503(b) actual and necessary costs and expenses of preserving the estate are allowed as administrative expenses. Here, the expenses incurred in order to dispose of the inactive medical records are actual and necessary. Accordingly, the motion is granted.

10. 04-25124-A-7 GEORGETOWN DIVIDE FHC HEARING - MOTION TO
 JRR #6 CENTER, INC. ALLOW TRUSTEE TO PAY ADMIN-
 ISTRATIVE EXPENSE TO OFFICE
 MANAGER CHERYL L. NICPONSKI
 8-11-04 [22]

Tentative Ruling: The debtor filed a petition under chapter 7 on May 18,

2004. John R. Roberts was appointed as the chapter 7 trustee. On June 23, 2004, the court approved the trustee's application to employ Cheryl Nicponski to perform office manager duties.

The trustee moves to pay compensation to Ms. Nicponski for 117.25 hours of professional services rendered to the estate. The compensation sought consists of \$1,524.25 in fees and reimbursement of expenses of \$16.86, for a total of \$1,541.11.

Ms. Nicponski's services included copying, mailing, and transporting medical charts to patients and physicians per the request of the debtor's former patients. The Department of Health Services for the State of California had informed the trustee that the charts must be kept under the control of the debtor's clinic and charts needed to be copied before they were released. Ms. Nicponski worked in the debtor's clinic and was familiar with forwarding the charts.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The court finds that the services performed were necessary and benefitted the estate. Furthermore, no one has objected to this motion.

However, while the court approves the fees and authorizes the trustee to pay them, the court does not order the trustee to pay them at this time. This is to give the trustee the maximum flexibility and discretion to determine whether the estate is administratively solvent. If the trustee concludes the estate is administratively solvent, he may pay the fees now. Otherwise, he may wait until the final report is approved before paying the fees with other expenses of equal priority in a manner consistent with 11 U.S.C. § 726.

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| 11. | <u>04-26626-A-7</u> BRIAN HARGRAVES
MLG #1
IVAN OWEN, VS. | HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-25-04 [8] |
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Final Ruling: The motion will be dismissed without prejudice.

Both the notice of the hearing and amended notice of the hearing give inaccurate and insufficient notice of the deadline for opposition. Both notices state that written opposition is due at least five days prior to the hearing if the motion is to be opposed. Because less than 28 days' notice of the hearing was given, Local Bankruptcy Rule 9014-1(f)(2) is applicable. This rule does not require the debtor, the creditors, and any other party in interest to file a written response or opposition to the motion. Rather, the rule allows parties in interest to present opposition, if any, orally at the hearing on the motion. Consequently, parties in interest were given inaccurate and insufficient notice regarding the requirements for opposing the motion.

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| 12. | <u>03-33429-A-7</u> LINDA MANGHAM
TAA #5 | CONT. HEARING - AMENDED
MOTION TO SELL ASSETS OF THE
ESTATE FREE AND CLEAR OF LIENS
8-16-04 [162] |
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Tentative Ruling: The trustee seeks to sell the real property located at 165 Pine Street, Portola, California. The property includes a commercial building in which the debtor and her estranged spouse, Mr. Mangham, operated the WipeOut Car Wash. Under the purchase agreement, the bankruptcy estate will pay

\$105,000 of the purchase price to satisfy a lien held by Plumas Bank.

The debtor originally filed petition for relief under chapter 13 on December 15, 2003. The case was later converted to a petition under chapter 7 on December 31, 2003.

The petition was preceded by a marital dissolution action filed by Mr. Mangham. The bankruptcy estate includes the debtor's separate property and the community property of the spouses. This property includes the 165 Pine Street real property and the accompanying car-wash business.

The trustee has accepted an offer from the debtor to purchase the 165 Pine Street property and business for \$300,000. The debtor deposited \$100,000 in an escrow account by August 26, 2004. Escrow will close no later than 15 days after an entry of an order approving the sale. The sale is subject to such overbids as may be made at the time of hearing. The trustee requests that the first overbid be at least \$412,000. This figure is \$112,000 higher than the purchase price. The trustee has calculated that \$100,000 can be credited to the debtor and Mr. Mangham based on savings in capital gains tax realized by the estate if the property is sold to the debtor. However, the additional \$12,000 portion of the trustee's calculated minimum bid has not been explained by the trustee. Therefore, the minimum bid must be revised such that it does not exceed \$402,000. Thereafter, minimum bidding increments will be \$2,000.

The trustee's amended instructions state that bidders must, upon successful bid: 1) bring a deposit in the form of a cashier's check for \$10,000 to the hearing; 2) increase the deposit to \$20,000 within two business days of entry of the order approving sale; 3) provide documentation of qualification for financing within three business days of the date of hearing and 4) close escrow within 14 days of entry of the order approving the sale.

11 U.S.C. § 363(f) allows trustees to sell property of the estate free and clear of liens only if: (1) permitted by non-bankruptcy law; (2) the lienholders consent to such sale; (3) the proposed purchase price exceeds the total value of the liens against the property; (4) a good faith dispute concerning the validity of the liens exists; or (5) in a judicial proceeding, the lienholders are compelled to accept a money satisfaction of their interest.

The trustee seeks approval of sale free and clear of liens of real property on the basis that the proposed purchase price exceeds the liens against the property. Moreover, no opposition has been filed by creditors in this case. Accordingly, the motion will be granted subject to overbids.

13. 03-33429-A-7 LINDA MANGHAM
TAA #6

HEARING - MOTION TO
APPROVE COMPROMISE AND DIVISION
OF COMMUNITY PROPERTY ASSETS
9-14-04 [172]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, the debtor, the creditors, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further or exigent circumstances require the court to resolve the matter immediately. If no opposition is offered at the hearing, the court will take up the merits of the motion.

14. 03-33429-A-7 LINDA MANGHAM HEARING - MOTION TO
04-2170 P&A #2 DISMISS CAUSES OF ACTION, IF
THOMAS MANGHAM, VS. GLOBAL SETTLEMENT IS APPROVED
LINDA MANGHAM 9-14-04 [11] O.S.T.

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, the debtor, the creditors, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further or exigent circumstances require the court to resolve the matter immediately. If no opposition is offered at the hearing, the court will take up the merits of the motion.

15. 04-27042-A-7 ALLEN JOHNSON HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
8-26-04 [11]

Tentative Ruling: The petition will be dismissed.

The debtor filed a petition for relief under chapter 7 on July 9, 2004. The debtor failed to file the following required documents: Summary of Schedules, Schedules A-J, and Statement of Financial Affairs.

Pursuant to Fed. R. Bankr. P. 1007(c), schedules and statements were due no later than July 26, 2004. These missing documents have not been filed. Accordingly, the petition will be dismissed.

16. 02-24243-A-11 ATLAS SEEDS, INC. HEARING - MOTION OF
HANK SPACONE FOR FIRST AND
FINAL ALLOWANCE OF TRUSTEE'S
FEES AND REIMBURSEMENT OF
EXPENSES AS CHAPTER 11 TRUSTEE
(\$12,900.00 FEES; \$327.36 EXP.)
8-19-04 [282]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The debtor filed a voluntary petition under chapter 11 on April 15, 2002. The movant, Hank Spacone, was appointed as the chapter 11 trustee on December 11, 2003.

The movant has filed his first and final application for the approval of compensation. He seeks compensation of \$12,900 and reimbursement of expenses of \$327.36, for a total of \$13,227.36.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] the trustee" and "reimbursement for actual, necessary expenses." The movant's services

included: 1) examining the United States Trustee's file and discussing case background with the Trustee's staff attorney; 2) obtaining a Bond of Trustee; 3) reviewing numerous court documents, the Plan, Disclosure Statement, financial reports, and Monthly Operating Reports; 4) discussing the case and Plan with various parties; 5) performing a physical test count of various inventory items; and 6) preparing detailed Cash Receipts, Disbursement Schedules, accrual monthly Income Statements, Monthly Operating Reports, a Preliminary Report Chapter 11 Trustee, and a Supplemental Report.

The movant requests that his compensation be based on time spent and expenses incurred for the chapter 11 case. His compensation is based on an hourly rate of \$200 which has been multiplied by 64.5 hours of services, for a total of \$12,900.

The movant has also calculated his compensation based on disbursements from the estate, which are estimated to be \$275,269. Based on 11 U.S.C. § 326, the maximum compensation payable to the movant would be \$17,013.

Although he requests that his compensation be based on actual time spent and expenses incurred, the movant has agreed to accept a payment of \$8,000 as payment in full. Acceptance of the \$8,000 payment in full is conditioned upon the debtor's paying this amount within 14 calendar days of the approval of this motion.

The motion will be granted. The court finds that the services performed were necessary and benefitted the estate. Furthermore, no one has objected to this motion. Therefore, fees of \$12,900 and expenses of \$327.36 will be approved, for a total of \$13,227.36. In the alternative, payment of \$8,000 will be approved as payment in full, so long as the debtor pays this amount to the trustee within 14 calendar days of an order on this motion.

17. 01-29952-A-7 JOHN HATCHER
KWS #10

HEARING - MOTION TO
SELL PROPERTY OF ESTATE
FREE AND CLEAR OF LIENS
8-23-04 [156]

Tentative Ruling: The motion will be granted.

The debtor, John Hatcher, filed a petition for relief under chapter 12 on August 22, 2001. The case was converted to a petition under chapter 7 on December 7, 2001. Kenneth R. Sanders was appointed as the chapter 7 trustee. The debtor received his discharge on March 21, 2003.

The chapter 7 trustee seeks to sell the debtor's retained earnings in the Farmers' Rice Cooperative (FRC) to the FRC for the sum of \$13,197.65. The reported value of the retained earnings is \$26,395.30. The trustee requests the sale be subject to overbids in increments of \$5,000. In addition, any over-bidder must be prepared to tender the purchase price to the estate in cash or cash equivalent within 48 hours after the conclusion of the hearing on this motion.

11 U.S.C. § 363(f) allows trustees to sell property of the estate free and clear of liens only if: (1) permitted by non-bankruptcy law; (2) the lienholders consent to such sale; (3) the proposed purchase price exceeds the total value of the liens against the property; (4) a good faith dispute concerning the validity of the liens exists; or (5) in a judicial proceeding, the lienholders are compelled to accept a money satisfaction of their interest.

The trustee seeks approval of sale free and clear of liens on the basis that no creditors have a duly perfected security interest in any of the subject property at this time. The trustee argues that the sale is favorable to the estate because, without a sale of the retained earnings at this time, the estate will have to wait for annual distributions from the FRC through the year 2012. Moreover, no opposition to this motion has been filed by creditors.

Accordingly, the motion is granted subject to overbids at the hearing.

18. 01-29952-A-7 JOHN HATCHER
KWS #11

HEARING - APPLICATION OF THE
WHITTALL-SCHERFEE LAW OFFICE FOR
SECOND INTERIM ALLOWANCE OF
ATTORNEYS' FEES AND COSTS
(\$1,720.00 FEES; \$34.68 COSTS)
8-23-04 [161]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The debtor, John Hatcher, filed a petition for relief under chapter 12 on August 22, 2001. The case was converted to a petition under chapter 7 on December 7, 2001. Kenneth R. Sanders was appointed as the chapter 7 trustee. On February 7, 2002, the court granted the application to employ the movant, Whittall-Scherfee Law Office, to serve as counsel for the chapter 7 trustee. The court granted the movant's first interim fee application on May 3, 2004.

During the second interim application period, the movant provided 8.6 hours of legal services. This application covers the period March 19, 2004 through August 19, 2004. The fees requested are for 8.6 hours at \$200 per hour, for a total of \$1,720. The movant also incurred mailing costs in the amount of \$34.68. Therefore, the total compensation sought is \$1,754.68.

The movant provided necessary services to the trustee including: 1) drafting pleadings for approval of compromise; 2) telephone communications, review, and drafting letter of acceptance regarding offer to purchase equity; 3) drafting notice, client's declaration, and motion to sell equity; and 4) drafting, filing, and serving applications for fees and related pleadings.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The court finds that the services performed were necessary and benefitted the estate. Furthermore, no one has objected to this motion.

However, while the court approves the fees and authorizes the trustee to pay them, the court does not order the trustee to pay them at this time. This is to give the trustee the maximum flexibility in determining whether the estate is administratively solvent. If the trustee concludes the estate is administratively solvent, he may pay the fees now. Otherwise, he may wait until the final report is approved before paying the fees with other expenses of equal priority in a manner consistent with 11 U.S.C. § 726.

19. 01-29956-A-7 HATCHER FARMS, INC.
KWS #8

HEARING - MOTION TO
SELL PROPERTY OF ESTATE
FREE AND CLEAR OF LIENS
8-23-04 [103]

Tentative Ruling: The motion will be granted.

The debtor, Hatcher Farms, Inc., filed a petition for relief under chapter 12 on August 22, 2001. The case was converted to a petition under chapter 7 on December 7, 2001.

The chapter 7 trustee seeks to sell the debtor's retained earnings in the Farmers' Rice Cooperative (FRC) to the FRC for the sum of \$38,836.51. The reported value of the retained earnings is \$77,673.02. The trustee requests the sale be subject to overbids in increments of \$5,000. In addition, any over-bidder must be prepared to tender the purchase price to the estate in cash or cash equivalent within 48 hours after the conclusion of the hearing on this motion.

11 U.S.C. § 363(f) allows trustees to sell property of the estate free and clear of liens only if: (1) permitted by non-bankruptcy law; (2) the lienholders consent to such sale; (3) the proposed purchase price exceeds the total value of the liens against the property; (4) a good faith dispute concerning the validity of the liens exists; or (5) in a judicial proceeding, the lienholders are compelled to accept a money satisfaction of their interest.

The trustee seeks approval of sale free and clear of liens on the basis that no creditors have a duly perfected security interest in any of the subject property at this time. The trustee argues that the sale is favorable to the estate because, without a sale of the retained earnings at this time, the estate will have to wait for annual distributions from the FRC through the year 2012. Moreover, no opposition to this motion has been filed by creditors.

Accordingly, the motion is granted subject to overbids at the hearing.

20. 01-29956-A-7 HATCHER FARMS, INC.
KWS #9

HEARING - APPLICATION OF THE
WHITTALL-SCHERFEE LAW OFFICE FOR
SECOND INTERIM ALLOWANCE OF
ATTORNEYS' FEES AND COSTS
(\$3,940.00 FEES; \$75.71 COSTS)
8-23-04 [109]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The debtor, Hatcher Farms, Inc., filed a petition for relief under chapter 12 on August 22, 2001. The case was converted to a petition under chapter 7 on December 7, 2001. Kenneth R. Sanders was appointed as the chapter 7 trustee. On February 7, 2002, the court granted the application to employ the movant, Whittall-Scherfee Law Office, to serve as counsel for the chapter 7 trustee.

The court granted the movant's first interim fee application on May 3, 2004 in the amount of \$13,900. The movant has been paid \$4,000, leaving a balance of \$9,900 due and outstanding.

During the second interim application period, the movant provided 19.7 hours of legal services. This application covers the period March 19, 2004 through August 19, 2004. The fees requested are for 19.7 hours at \$200 per hour, for a total of \$3,940. The movant also incurred mailing costs in the amount of \$75.71. Therefore, the total compensation sought is \$4,015.71.

The movant provided necessary services to the trustee including: 1) negotiating and drafting a settlement; 2) drafting notice, motion, and declaration regarding approval of settlement; 3) finalizing, reviewing, filing, and serving pleadings for motions to approve and compromise; 4) drafting proposed orders; 5) telephone communications and drafting letters regarding payments and offer; 6) drafting declaration and notice of hearing regarding motion to sell; and 7) drafting and filing applications for fees.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The court finds that the services performed were necessary and benefitted the estate. Furthermore, no one has objected to this motion.

However, while the court approves the fees and authorizes the trustee to pay them, the court does not order the trustee to pay them at this time. This is to give the trustee the maximum flexibility in determining whether the estate is administratively solvent. If the trustee concludes the estate is administratively solvent, he may pay the fees now. Otherwise, he may wait until the final report is approved before paying the fees with other expenses of equal priority in a manner consistent with 11 U.S.C. § 726.

21. 04-28558-A-7 CATALINA/ELADIO MONTOYA HEARING - MOTION FOR
WAJ #1 RELIEF FROM AUTOMATIC STAY
MAY LUI, VS. 8-31-04 [8]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the moving creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

22. 04-27962-A-7 GREGORY HERNANDEZ HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
8-24-04 [6]

Final Ruling: The debtor filed a petition for relief under chapter 7 on August 4, 2004. The debtor failed to file the following required documents: Summary of Schedules, Schedules A-J, Declaration of Schedules, and Statement of Financial Affairs. The missing documents were due on August 19, 2004.

The order to show cause will be discharged and the petition shall remain

pending. The missing documents were filed on September 13, 2004.

23. 04-22465-A-11 DENNIS/MAREN MURPHY CONT. HEARING - MOTION FOR
FWK #1 RELIEF FROM AUTOMATIC STAY ETC
THE ADELINE L. WAGNER TRUST, VS. 7-28-04 [139]

Tentative Ruling: On September 2, 2003, the debtors filed a petition under chapter 12, but the case was dismissed on March 30, 2004. The debtors subsequently filed a petition under chapter 11 on March 11, 2004.

The debtors executed a deed of trust in favor of the movant, The Adeline Wagner Trust, to secure an indebtedness of \$144,000. The deed of trust encumbers property described as 160 acres near Dixon, in Yolo County, California.

The debtors have defaulted under the note, owing all payments due beginning April 1, 2003. The total unpaid principal on the note is \$89,385 plus interest, late charges, and attorney's and foreclosure fees. The movant estimates the total unpaid balance to be approximately \$108,000.

The property has been valued at \$325,000. This value of the property indicates that the debtors would have approximately \$202,000 in equity, after accounting for the movant's estimation of \$15,000 in delinquent property taxes.

The movant requests that relief from automatic stay be granted pursuant to 11 U.S.C. § 362(d)(1) for cause and inadequate protection. The movant argues that the debtors have failed to make payments due under the note, pay post-petition property taxes, and confirm a plan.

Relief from the stay is not proper in the instant case. Here, the movant is adequately protected by the substantial equity the debtors have in the property. Other than the taxes, the movant holds the senior lien. Further, a review of the file suggests that the debtors are making progress toward a reorganization. They have sold other property and made substantial payments to the creditors secured by the assets sold.

The parties are to bear their own fees and costs.

24. 04-28372-A-7 MATTHEW WELDING HEARING - MOTION FOR
MPT #1 RELIEF FROM AUTOMATIC STAY ETC
BILL AND JIM COOK, INC., VS. 9-2-04 [13]

Final Ruling: The motion will be dismissed without prejudice.

The notice of hearing sets the hearing on September 15 in the wrong department. September 15 is not an available law and motion date in the correct department.

25. 03-31676-A-7 NATALIE GRONDAHL HEARING - MOTION FOR
DGN #1 RELIEF FROM AUTOMATIC STAY
MAZDA AMERICAN CREDIT, VS. 8-27-04 [49]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the moving creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need

to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

26. 04-27384-A-7 JAMES LUNDY
KK #1
GREEN TREE SERVICING, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-18-04 [12]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The debtor's default is entered and the matter will be resolved without oral argument.

The debtor filed a petition for relief under chapter 7 on July 19, 2004. Susan K. Smith was appointed as the chapter 7 trustee.

The debtor executed a deed of trust in favor of the movant, Green Tree Servicing, LLC FKA Conseco Finance Corp., to secure indebtedness in the amount of \$15,300. The deed of trust encumbers residential rental property located at 2029 N. 107th Drive, in Avondale, Arizona. The subject property has a value of approximately \$150,000 according to Schedules A and D.

The debtor has defaulted under the note, owing all payments accruing after May 23, 2004. The total unpaid balance on the note is \$16,342.54, including interest and costs. The property is also encumbered by a senior lien securing a total of approximately \$105,000.

The movant requests that relief from automatic stay be granted pursuant to 11 U.S.C. § 362(d)(1) for cause and inadequate protection. The movant argues that the debtors have failed to make payments due under the note, and that there is not a sufficient equity cushion to provide it with adequate protection. The court agrees. After likely expenses of sale, there is de minimis equity. This is also indicated by the debtor's statement of intention to surrender the property and the trustee's failure to oppose the motion.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Fobian v. Western Farm Credit Bank (In re Fobian), 951 F.2d 1149, 1153 (9th Cir. 1991); Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are

denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed \$750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of \$750.

27. 02-20189-A-7 JUANITA HAYES
TAA #4

HEARING - TRUSTEE'S OBJECTION TO
CLAIM NOS. 8 & 27 FILED BY
BEAM "EASY LIVING" CENTER
8-24-04 [114]

Tentative Ruling: Because this objection to a proof of claim has been set for hearing on less than the 44 days' notice to the claimant required by Local Bankruptcy Rule 3007-1(d)(1) (effective Dec. 23, 2002), it is deemed brought pursuant to Local Bankruptcy Rule 3007-1(d)(2). Therefore, the creditor and any other party in interest need not file written opposition prior to the hearing and they may raise opposition orally at the hearing. If a colorable defense to the objection is raised, the court may assign a briefing schedule and a final hearing date and time or, if there is no need to develop the record further, consider the merits of the objection. If there is no opposition raised at the hearing, the court will consider the merits of the objection.

28. 02-20189-A-7 JUANITA HAYES
TAA #5

HEARING - TRUSTEE'S OBJECTION TO
CLAIM NOS. 3 & 25 FILED BY WHITE
CAP PRO-CONTRACTOR
8-24-04 [114]

Tentative Ruling: Because this objection to a proof of claim has been set for hearing on less than the 44 days' notice to the claimant required by Local Bankruptcy Rule 3007-1(d)(1) (effective Dec. 23, 2002), it is deemed brought pursuant to Local Bankruptcy Rule 3007-1(d)(2). Therefore, the creditor and any other party in interest need not file written opposition prior to the hearing and they may raise opposition orally at the hearing. If a colorable defense to the objection is raised, the court may assign a briefing schedule and a final hearing date and time or, if there is no need to develop the record further, consider the merits of the objection. If there is no opposition raised at the hearing, the court will consider the merits of the objection.

29. 04-27490-A-7 CARLO HARRINGTON

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL, CONVERSION OR
IMPOSITION OF SANCTIONS
8-27-04 [9]

Final Ruling: The order to show cause will be discharged as moot. The petition was dismissed on September 13, 2004.

30. 03-30996-A-11 ALFONSO FALLON
CLH #3

HEARING - MOTION FOR FIRST
AND FINAL ALLOWANCE OF ATTORNEYS
FEES AND REIMBURSEMENT COSTS FOR
COUNSEL FOR CHAPTER 11 DEBTOR
(\$15,540.00 FEES; \$263.83 COSTS)
8-23-04 [122]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The movant, Hill & Morris, Attorneys at Law, counsel for the debtor, has filed its first and final application for approval of compensation. The sought compensation consists of \$15,540 in attorney's fees and \$263.83 in costs, for a total of \$15,803.83. This application covers the period from November 26, 2003 to August 12, 2004.

The movant's services included: 1) preparing the debtor's plan and disclosure statement; 2) reviewing various documents with regard to the plan; 3) opposing motions by the United States Trustee and creditors; and 4) seeking and obtaining employment of an auctioneer.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The court finds that the services performed were necessary and benefitted the estate. Furthermore, no one has objected to this motion.

However, while the court approves the fees and authorizes the trustee to pay them, the court does not order the trustee to pay them at this time. This is to give the trustee the maximum flexibility in determining whether the estate is administratively solvent. If the trustee concludes the estate is administratively solvent, he may pay the fees now. Otherwise, he may wait until the final report is approved before paying the fees with other expenses of equal priority in a manner consistent with 11 U.S.C. § 726.

31. 04-28396-A-7 ERIC EGELINE

HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
8-26-04 [8]

Final Ruling: On August 17, 2004, the debtor filed a petition for relief under chapter 7. Michael P. Dacquisto was appointed as the chapter 7 trustee. The debtor failed to file the following required documents: Schedules A, G, and H,

Statement of Financial Affairs, Master Address list, and Statement of Social Security Number(s). The Schedules and Statement of Financial Affairs were due on September 1, 2004, and the Master Address List and Statement of Social Security Number(s) was due on August 23, 2004.

The debtor filed all of the missing documents on August 31, the signature page for the documents on September 7, and paid the accompanying filing fee. Therefore, the petition will remain pending.